

3.21.17
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REQUEST FOR DECLARATORY RULINGS

The below Declaratory Ruling request should be added to existing case file 06-210 and Public Notice released as soon as possible.

Re: WC Docket No. 06-210
CCB/CPD 96-20

Petitioners: One Stop Financial, Inc., Winback & Conserve Program Inc., 800 Discounts, Inc., and Group Discounts, Inc. submit the following declaratory ruling request:

Issue a Declaratory as per the January 1995 traffic only non-plan transfers for both the CCI to PSE traffic only transfer and the Inga Companies to PSE traffic only transfer under both Tariff section 2.1.8 and tariff section 3.3.1.Q Bullet 4 delete and add. Interpret whether AT&T violated its tariff by subjectively determining that a substantial traffic only non-plan transfer should be deemed a plan transfer to force revenue and time commitments to also transfer (AT&T's Tr8179 assertion) or a transfer of just the revenue and time commitments without the plan AT&T's post DC Circuit controversy. The Commissions interpretation can also consider the 4 petitioners maintained Letter of Agency Status on the end-user locations both prior to and after the 4 petitioners plan transfers to Combined Companies, Inc. that was effective in May 1995.

Please interpret if it would be a violation of AT&T's tariff to force a substantial traffic only non-plan transfer be determined a plan transfer based upon each of the following:

- 1) Under 3.3.1Q bullet 4 AT&T had no control at all if one AT&T customer deleted its end-user locations and a different AT&T customer decided to add the customer to its non-transferred plan. AT&T could not force a customer to keep its end-user locations and could not prevent a customer from adding end-user locations. Therefore, would it be a violation of the tariff if AT&T forced a plan transfer.
- 2) Given the fact that AT&T did not deny in writing that the traffic only non-plan transfers violated section 2.1.8 within 15 days as per 2.1.8 (c) of either the CCI to PSE or the Inga to PSE January 1995 traffic only transfers and thus any AT&T defense as per 2.1.8 would be **precluded**.

- 3) Would it be a violation of AT&T's tariff to transfer the two obligations listed within 2.1.8 plus the revenue and time commitments but **not** transfer the plan. (AT&T's post DC Circuit Court assertion that its tariff allows this type of transaction.)
- 4) Within section 2.1.8 or 3.3.1.Q bullet 4 there is no rate or regulation **referred to** in any other tariff section such as fraudulent use under 2.2.4, that would give AT&T the authority to determine that it could deem that a traffic only, non-plan transfer be deemed a plan transfer to force customer plan obligations of revenue and time commitments to transfer.
- 5) Unreasonable under 201 of the 1934 Communications Act for AT&T to determine it had the right under 2.1.8 to consider a traffic only non-plan transfer be determined a plan transfer since the intent of AT&T's determination was due to protecting itself from loss of shortfall charges without consideration: (a) The plans that had already met is fiscal year commitment, (b) the transfer was temporary, (c) whether the non-transferred plans were pre June 17th 1994 exempt from meeting the shortfall obligations at the time of the end-user account movement.
- 6) Unreasonable under 201 of the 1934 Communications Act to have conceded within the Tr8179 filing that the transactions were traffic only non-plan transfers then later assert that that the transactions *in this case* were plan transfers.
- 7) Unreasonable under 201 of the 1934 Communications Act to have withdrawn Tr8179 on June 2nd 1995 based upon the Commission advising it would only go through prospectively and replaced it with Tr9229 then revive the Tr8179 defense in 1996 before the Commission.
- 8) Discriminatory under 202 of the 1934 Communications Act as AT&T counsel Fred Whitmer conceded that AT&T allowed thousands of other AT&T customers to order traffic only non-plan transfers in which the revenue and time commitments did not transfer but did not permit petitioners. Would it be discrimination under 2.1.8 or 3.3.1Q bullet 4 to subjectively determine fraudulent use intent to force a plan transfer to force revenue and time commitments to transfer.
- 9) **The FCC's October 1995 Order** covered a mandate upon AT&T to meet the substantial cause test from November 1st 1996 through October 31st 1996. AT&T claims that as of November, 1st 1995 it was still a controversy whether the terms and conditions of sections 2.1.8 and 3.3.1Q bullet 4 enabled AT&T to mandate that a traffic only transfer be deemed a plan transfer. AT&T's 1996 brief to the FCC revived this controversy after AT&T's Counsel Meade advised the Judge Politan that Tr8179 was no longer a controversy. Given the fact AT&T revived during the 1 year period this controversy should AT&T's failure to meet the required substantial cause test preclude AT&T from raising any defenses as per 2.1.8.

- 10) Unreasonable under 201 of the 1934 Communications Act for AT&T to have not asserted in Judge Bassler's Court that there was a pending controversy that AT&T had the right under 2.1.8 to consider a traffic only non-plan transfer be determined a plan transfer then claim at the FCC there is a controversy.
- 11) Unreasonable under 201 of the 1934 Communications Act for AT&T to assert it still had the right under 2.1.8 to consider a traffic only non-plan transfer be determined a plan transfer, after Judge Politan's non-vacated May 1995 Decision explicitly determined that the outcome of Tr8179 would determine whether AT&T had the subjective ability to determine that a traffic only non-plan transfer should be determined a plan transfer.
- 12) Unreasonable under 201 of the 1934 Communications Act and a violation of FCC Rules in that section 2.1.8 or 3.3.1Q bullet 4 did not explicitly state that AT&T had the right to determine when a substantial traffic only non-plan transfer should can be determined by AT&T as a plan transfer.
- 13) An illegal remedy as AT&T denied all traffic only transfers under 2.1.8 no matter how much traffic was being moved and no matter which obligations were being transferred. So, there was no way to transfer less traffic.
- 14) Discriminatory under 202 of the Communications Act for AT&T to have never required any other AT&T customer engaging in a traffic only, non-plan transfer, to be determined as a plan transfer but required petitioners traffic only non-plan transfer to be determined a plan transfer.

Al Inga President
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